

D-12

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 10, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No. 05MD-138
MAUI

Amend Prior Board Action of February 9, 2007, Item D-6, for Grant of Term, Non-Exclusive Easement to Thomas R. Brayton and Christine D. Brayton for Seawall Purposes, Lahaina, Maui, Tax Map Key: (2) 4-6-003:Seaward of 005.

BACKGROUND:

The Land Board at its February 9, 2007 meeting, under agenda item D-6, approved a Grant of Perpetual, Non-Exclusive Easement for seawall encroachment purposes to Thomas R. Brayton and Christine D. Brayton (Exhibit 2).

REMARKS:

On August 22, 2007 the Maui Land Division received written notification, from Christine K. Ho, that she purchased the subject property at Tax Map Key: (2) 4-6-003:005 from Thomas and Christine Brayton.

An amendment to the prior subject request is being made to change the applicant's name from Thomas and Christine Brayton to Christine K. Ho, Trustee of the Trust established under the Living Trust Declaration of Christine K. Ho dated January 15, 1988 and amendments thereto, a revocable trust for the benefit of Christine K. Ho.

The March 30, 2005 Shoreline Verification Map as prepared by surveyor Randall Sherman has been revised to better reflect the entire wall in the proposed encroachment easement area, including the portion of wall that fronts the adjacent parcel 004.

Please note that the encroaching stairway, identified on the previous survey map that was approved by the Board on February 9, 2007, Item D-6, has been removed by the applicant. Furthermore, the previous map depicted an encroachment area of less than 100 square feet. However, the revised encroachment area now exceeds 100 sq. ft. and is now subject

to a standard \$500.00 fine. The amended map is attached as Exhibit 1 and supercedes the previous map, which is attached as part of Exhibit 2.

RECOMMENDATION: That the Board:

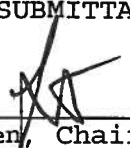
1. Amend its prior Board action of February 9, 2007, under agenda Item D-6 by replacing all references to the name of the applicants Thomas R. Brayton and Christine D. Brayton to Christine K. Ho, Trustee of the Trust established under the Living Trust Declaration of Christine K. Ho, Trustee of the Trust established under the Living Trust Declaration of Christine K. Ho dated January 15, 1988 and amendments thereto, a revocable trust for the benefit of Christine K. Ho;
2. Amend the seawall encroachment area to 130 square feet, more or less;
3. Amend Applicant Requirements to include a fine of \$500.00 for the encroachment;
4. Accept that all terms and conditions listed in its February 9, 2007, Item D-6 approval to remain the same.

Respectfully Submitted,



Larry Pacheco
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

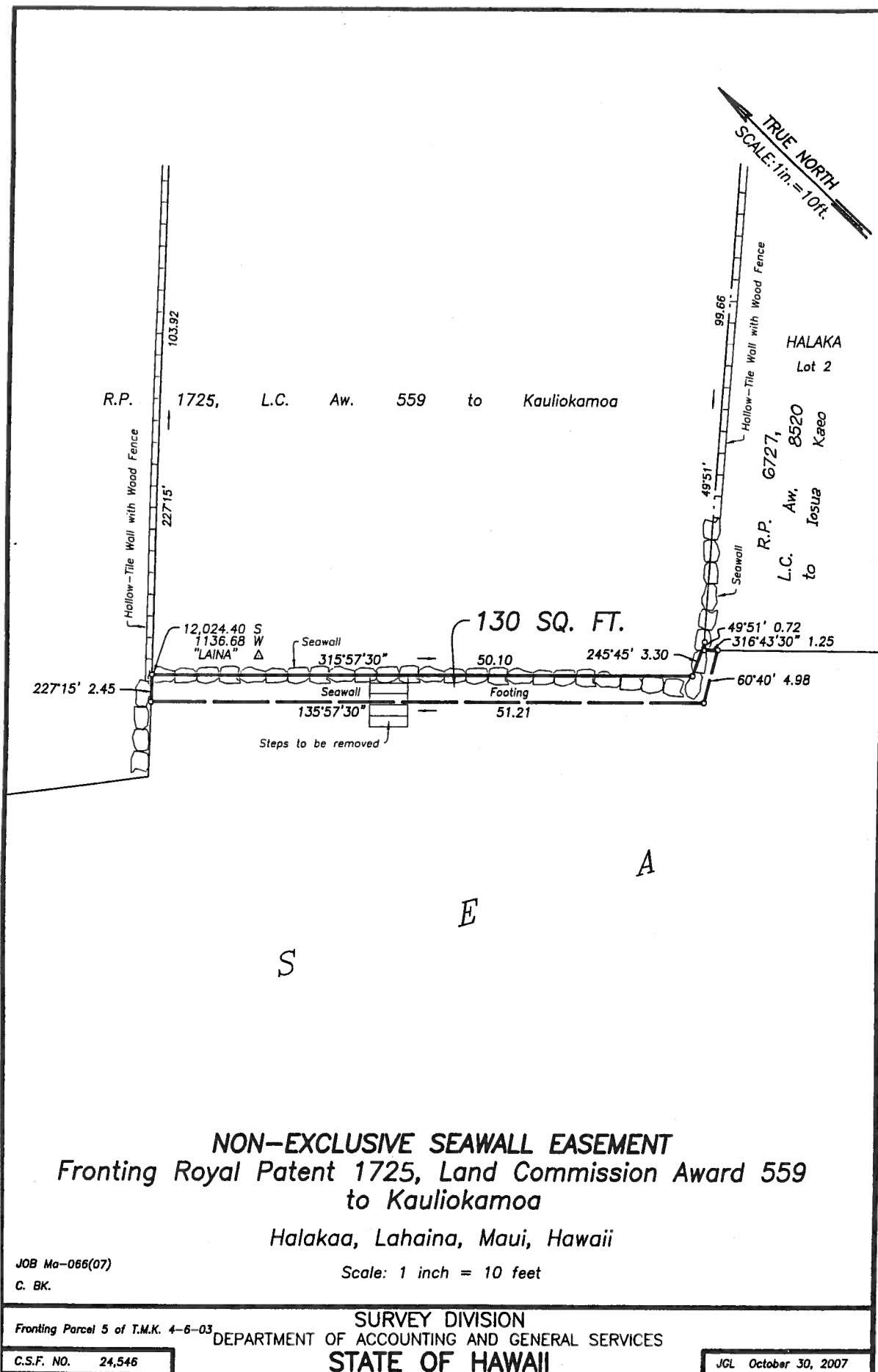


EXHIBIT "1"

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 9, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 05MD-138

MAUI

Grant of Term, Non-Exclusive Easement to Thomas R. Brayton and
Christine D. Brayton for Seawall Purposes, Lahaina, Maui, Tax
Map Key: (2)4-6-003: seaward of 005.

APPLICANT:

Thomas R. Brayton and Christine D. Brayton, husband and wife, as
tenants by the entirety, whose mailing address is
Lahaina, Hawaii 96761.

LEGAL REFERENCE:

Section 171-13 and -53(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Lahaina, Maui,
identified by Tax Map Key: (2)4-6-003: seaward of 005, as shown on
the attached map labeled Exhibit "A."

AREA:

69 square feet, more or less.

ZONING:

State Land Use District: Conservation / Urban
County of Maui CZO: R-3

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO X

CURRENT USE STATUS:

Unencumbered with encroachments.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

February 9, 2007

EXHIBIT "2" ^{D-6}

BLNR - Issuance of Easement
to Brayton

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CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

During a recent site visit, Office of Conservation and Coastal Lands (OCCL) staff observed the subject seawall and determined it appeared to be built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Ch. 343.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment.
- 2) Provide survey maps and descriptions according to State DAGS standards at Applicant's own cost.
- 3) Remove any barriers (fences, overgrown vegetation, railings, signs, etc.) established beyond the Applicant's property that may prevent lateral access by the public over state lands.
- 4) Comply with all County of Maui Special Management Area and Shoreline rules and requirements.
- 5) Conduct an Archaeological Inventory Survey and submit to the State Historic Preservation Division for review.
- 6) If pursuant to Archaeological Inventory Survey the seawall is determined to be over 50 years old. The seawall shall be documented and issued a number for the State's Inventory of Historical Places list.

BLNR - Issuance of Easement
to Brayton

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REMARKS:

The subject encroachment was discovered during the shoreline certification process filed by the previous owner of the abutting property, Mr. Stan Dunn. A copy of the shoreline survey map referencing the subject encroachment is attached as Exhibit "B." Mr. Dunn submitted notarized affidavits and aerial photographs indicating the seawall was built prior to 1964.

The Office of Conservation and Coastal Lands (OCCL) has determined that removal of the encroachment will not improve beach resources or enhance public access. OCCL has no objections to the subject easement request.

Summary of solicited comments:

Agency	Comments
DHHL	No comment
County of Maui, Dept of Planning	Comply with SMA and Shoreline rules
County of Maui, Public Works	No Comment
State Historic Preservation Div.	Conduct Archaeological Inventory Survey
OHA	Appraise at fair market value and maintain public access over public lands
OCCL	No objections

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff recommends no fine as the subject encroachment is less than 100 square feet.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

There are no other issues or concerns.

RECOMMENDATION: That the Board:

1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 4-6-003:005, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Thomas R. Brayton and Christine D.

BLNR - Issuance of Easement
to Brayton

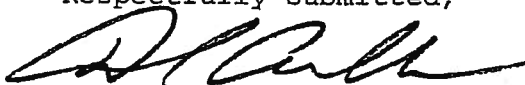
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Brayton covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

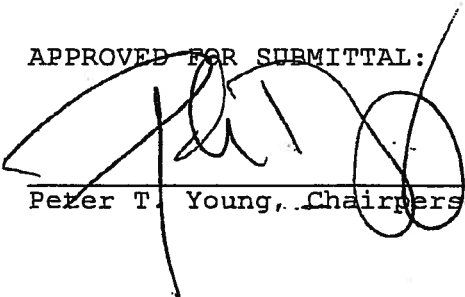
- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 4-6-003:005, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



Daniel Ornellas
Maui District Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

LAHAINA, MAUI

SUBJECT TO CHANGE

TAXATION MAPS BUREAU			
TERRITORY OF HAWAII			
TAX MAP			
SECOND DIVISION			
ZONE	SEC.	PLAT	
4	6	03	
CONTAINING PARCELS			
SCALE: 1 IN. = 50 FT.			

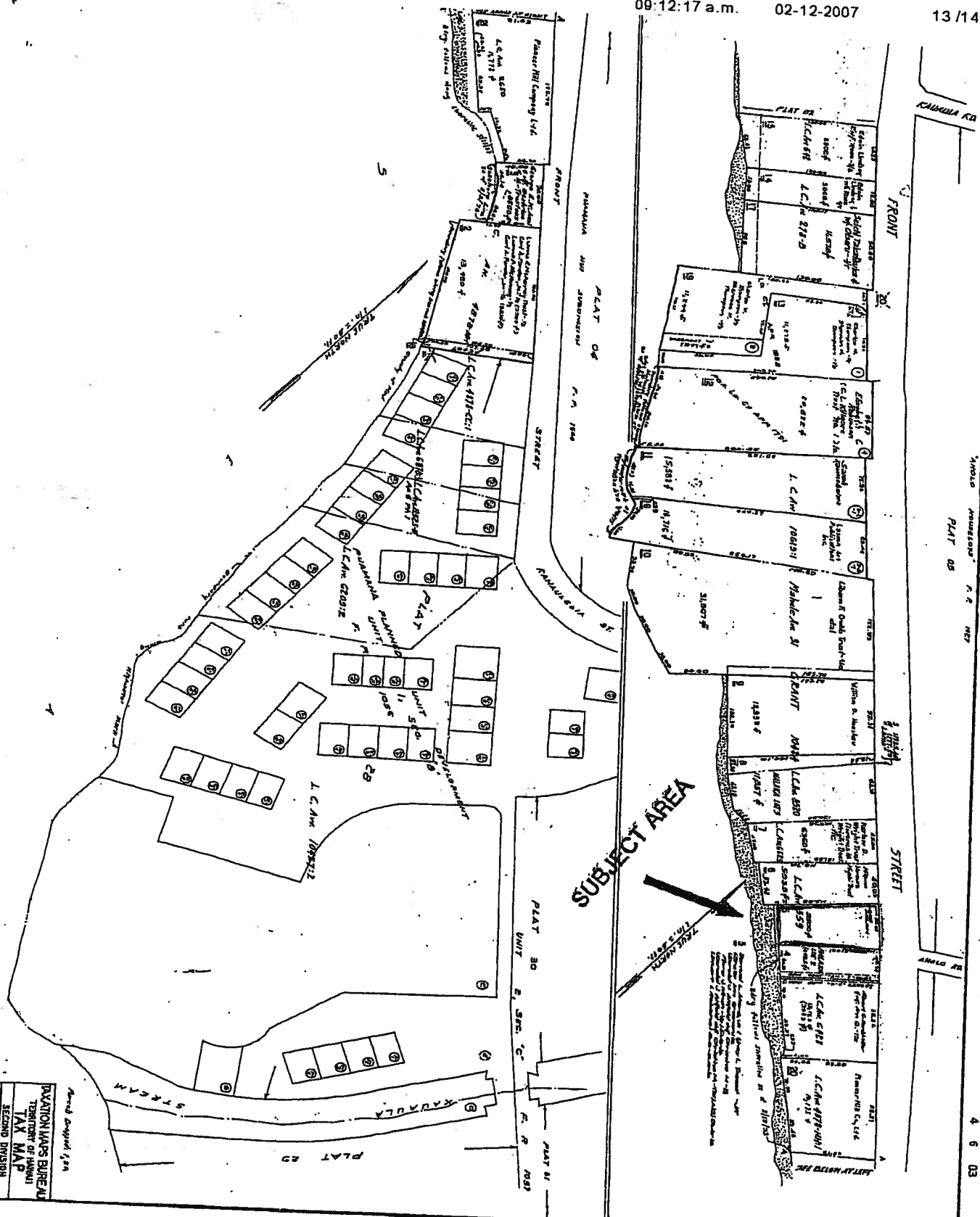
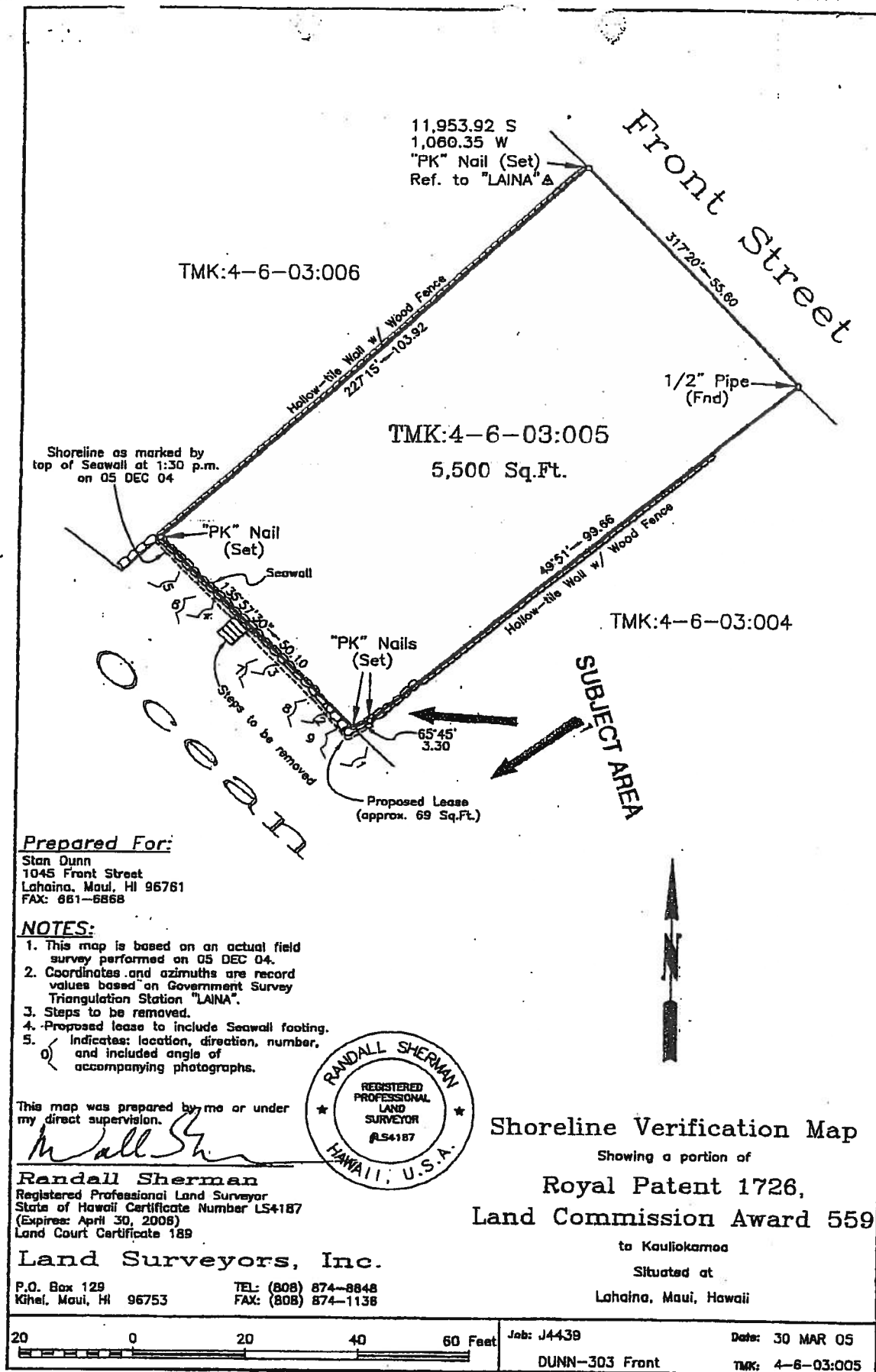


EXHIBIT A

**EXHIBIT B**